

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON MICHAEL GAMINO,

Plaintiff,

v.

MICHAEL PEAR,

Defendant.

Case No. 2:23-cv-02519-TLN-JDP (PS)

**ORDER**

GRANTING PLAINTIFF'S APPLICATION  
TO PROCEED *IN FORMA PAUPERIS*

ECF No. 2

**FINDINGS AND RECOMMENDATIONS**

THAT PLAINTIFF'S COMPLAINT BE  
DISMISSED WITHOUT LEAVE TO AMEND

ECF No. 1

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

Plaintiff brings this action against Michael Pear, an "attorney/pro tem judge" who he alleges presided over his traffic court and denied him the right to view a highway patrol officer's body camera footage. ECF No. 1. Defendant is immune from suit, and plaintiff's claims are barred by the *Rooker-Feldman* doctrine. I will recommend that plaintiff's complaint be dismissed without leave to amend. I will grant his application to proceed *in forma pauperis*, ECF No. 2, which makes the showing required by 28 U.S.C. §§ 1915(a)(1) and (2).

### Screening and Pleading Requirements

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

### Analysis

Plaintiff alleges that defendant, a pro tem judge, violated his rights by denying him the opportunity to view a highway patrol officer’s body camera footage and by preventing him from speaking on record. ECF No. 1 at 4. This action fails because defendant is entitled to judicial immunity. See *O’Neil v. City of Lake Oswego*, 642 F.2d 367, 368-70 (9th Cir. 1981) (pro tem

1 judge entitled to judicial immunity). Additionally, plaintiff's suit runs afoul of the *Rooker-*  
2 *Feldman* doctrine, which holds that federal courts lack appellate jurisdiction to review final state  
3 court judgments. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) ("Under the  
4 legislation of Congress, no court of the United States other than this court could entertain a  
5 proceeding to reverse or modify the judgment for [constitutional] errors . . ."). The doctrine  
6 applies where, as here, plaintiff challenges a final traffic court judgment. *See Herships v. Cantil-*  
7 *Sakauye*, No. 17-cv-00473-YGR, 2017 U.S. Dist. LEXIS 81506, at \*15 (N.D. Cal. May 26, 2017)  
8 ("Thus, plaintiff's claims related to the state court's judgment against him and subsequent  
9 suspension of his driver's license are barred by the *Rooker-Feldman* doctrine.").

10 Accordingly, it is hereby ORDERED that plaintiff's application to proceed for leave to  
11 proceed *in forma pauperis*, ECF No. 2, is granted.

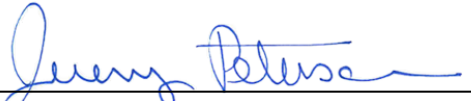
12 Further, it is RECOMMENDED that:

- 13 1. Plaintiff's complaint be dismissed without leave to amend.
- 14 2. The Clerk of Court be directed to close the case.

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
17 after being served with these findings and recommendations, any party may file written  
18 objections with the court and serve a copy on all parties. Such a document should be captioned  
19 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
20 objections shall be served and filed within fourteen days after service of the objections. The  
21 parties are advised that failure to file objections within the specified time may waive the right to  
22 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
23 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24  
25 IT IS SO ORDERED.

26 Dated: March 15, 2024

27   
28 JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE